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September 22, 2003

Ex Parte Filing

Marlene Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
12th Street Lobby, Room TW-A325
Washington, D.C. 20554

Re: *Pay Telephone Reclassification and Compensation Provisions of the
Telecommunications Act of 1996, CC Docket 96-128; RBOC/GTE/SNET
Payphone Coalition Petition for Clarification, NSD File No. L-99-34*

Dear Ms. Dortch:

On September 17, 2003,¹ on behalf of the RBOC Payphone Coalition, Marie Breslin of Verizon, Richard Fouke of Verizon, Michael Alarcon of SBC, and I met with Gregory M. Cooke, Henry L. Thaggert III, Darryl Cooper, and Jack J. Yachbes regarding the pending Further Notice of Proposed Rulemaking in the above-captioned docket.

During the meeting, we urged the FCC to re-adopt the "first-switch carrier pays" rule that was the foundation of the *Second Order on Reconsideration*. The Commission should make clear that the first facilities-based IXC to receive a payphone-originated call from the LEC is responsible for compensating the PSP for all completed calls that it receives. At the same time, the FCC should also make clear that, to the extent some of these calls are carried by multiple carriers, IXCs and their switch-based reseller (SBR) customers are free to negotiate appropriate arrangements for reimbursement and exchange of call completion information.

¹ The Commission was closed on September 18 and September 19, 2003.

We stressed that there is no legal obstacle to re-establishing the first-switch carrier pays rule. Contrary to the arguments that some long-distance carriers have made, such a rule does *not* require IXC's to act as "guarantors" of another carrier's obligation. Instead, IXC's themselves benefit from *all* of the payphone-originated calls that they carry: they bill SBRs for them and they need not carry them if they do not wish to do so. If reselling carriage of payphone-originated calls is beneficial to the IXC – and it is, or they wouldn't be in the business – then there is no obstacle to requiring IXC's to compensate PSPs for the services that the PSP is providing.

Relatedly, it is simply not true that a first-switch carrier pays rule relieves PSPs of all business risk. To the contrary, there have been major bankruptcies among facilities-based carriers, costing PSPs many tens of millions of dollars for which they have never been compensated. More fundamentally, unlike IXC's, which have a choice about whether to accept payphone-originated calls and whether to enter into business arrangements with particular SBRs, PSPs have no choice about whether or to whom their traffic will be routed. PSPs are forced into the transaction; IXC's are not. And IXC's can fairly allocate any business risk with their SBR customers; again, PSPs have no such ability.

Indeed, the basic flaw of the original rule, under which SBRs were largely responsible for tracking and paying compensation, is that PSPs are at an enormous disadvantage when it comes to enforcing their compensation rights against SBRs. RBOC PSPs lost tens, if not hundreds, of millions of dollars under the old rule. This is true for several reasons: PSPs do not know how many calls are routed to resellers or who the resellers are; many of the resellers are small companies that may receive relatively few calls; resellers commonly go out of business and resume operations under different names. Attempting to bring enforcement actions against small resellers is a practical impossibility, but because there are many hundreds of such carriers, their unpaid obligations add up to significant losses for which PSPs have received no compensation.

The basic strength of the "first-switch carrier pays" rule is that it depends on market mechanisms to ensure that IXC's and SBRs share information and allocate costs efficiently. Notably, all parties insist that the long-distance market is competitive. If so, then IXC's should be free to offer whatever terms they wish to ensure that resellers reimburse IXC's for payphone-originated calls that SBRs complete. If an SBR does not find the terms acceptable, it can go elsewhere for service. Accordingly, there is no justification for adopting regulations to govern the flow of information and compensation from SBRs to IXC's. As long as the market is functioning, it should resolve the issue more efficiently than regulation can.

Indeed, the very availability of market mechanisms is a significant advantage of the first-switch rule over the last-switch rule. All of the elaborate safeguards that the Commission would have to put in place to give SBRs the right to compensate PSPs directly would be unnecessary. And whatever safeguards the Commission adopts will almost inevitably impose significant inefficiencies – either needless costs or insufficient protection. By contrast, if the market is allowed to work, IXC's and SBRs can negotiate arrangements that are efficient and that will ensure that all business risks are fairly allocated.

We also addressed some of the recent proposals that MCI, Qwest, and AT&T have submitted to address the enforcement problems that plagued the original reseller rules. We believe those proposals do represent an improvement on the original rules. Among the features that we consider absolutely essential:

1. All of the proposals recognize that the IXC must pay on all completed calls routed to its switch unless the SBR and the IXC take appropriate affirmative steps to ensure that (a) calls can be tracked; (b) PSPs can identify which calls are being routed to the SBR; and (c) the SBR accepts responsibility to pay for such calls. IXCs can only be relieved of responsibility for payment if an SBR appropriately accepts that responsibility. There should be no confusion that, until SBRs are fully certified to pay compensation, IXCs remain responsible.
2. All of the proposals require public certification by the SBRs with the FCC. This is critical, because simply identifying SBRs and tracking them down was often impossible under the original SBR-pays rules. The content of the certification requirement proposed by MCI is an appropriate minimum.
3. The proposals properly require independent verification of call tracking systems and officer certification of compliance. IXCs should also be required to verify their call tracking systems and provide officer certification. In light of past problems with enforcement, that is an essential safeguard.

To ensure that compensation payments are verifiable, at a minimum, IXCs and SBRs should be required to provide the following information to PSPs:

1. SBRs must provide a list of their toll-free numbers.
2. IXCs must provide a list of toll-free numbers for SBRs they serve.

All such 800-number lists must be kept current and made available to all PSPs.

3. IXCs must provide, for each individual payphone ANI and each SBR toll-free number, the number of call attempts (whether or not completed). IXCs must also maintain back-up data with call detail records in case of discrepancies.
4. SBRs must provide, for each individual ANI and each toll-free number:
 - a. the number of attempts, broken down by IXC, that is, the SBR must account separately for the number of calls received from each facilities-based IXC for each toll-free number (if different IXCs carry calls to a single toll-free number); and
 - b. the number of completed calls, again broken down by IXC.

SBRs should also be required to maintain back-up data with call detail records in case of discrepancies.

We emphasized, however, that adopting a "first-switch" solution is far preferable to adopting elaborate regulatory requirements to attempt to plug the many holes in an SBR-pays regime. Indeed, even if the FCC adopts detailed regulatory requirements, it will be difficult if not impossible to anticipate all of the enforcement issues that may arise. For example:

- Who will be responsible if an IXC reports that it handed off more call attempts to an SBR than the SBR reports receiving from the for the same toll-free number for the same period? That is what happened under the old rules – order-of-magnitude discrepancies between the number of calls IXCs claimed to be routing to SBRs and the number of calls SBRs claimed to be receiving. Who will be responsible for sorting out any discrepancy?
- What happens when an SBR hands off a call to a second SBR?
- What will happen if SBR simply refuses to pay? An IXC can stop providing service, but a PSP cannot. Or, as commonly happens, an SBR goes out of business? Uncollectible risk will be significant, and the FCC will have to build that risk into the new per-call compensation rate.

One original and two copies of this letter are being submitted to you in compliance with 47 C.F.R. § 1.1206(a)(2) to be included in the record of these proceedings. If you have any questions concerning this matter, please contact me at (202) 326-7921.

Sincerely,



Aaron M. Panner

cc: Mr. Cooke
Mr. Thaggart
Mr. Cooper
Mr. Yachbes